Supreme Ct, U. S.
FILED
AUG 25 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1440

EDWARD W. MAHER, COMMISSIONER OF SOCIAL SERVICES OF CONNECTICUT,

Appellant,

v.

SUSAN ROE, ET AL.,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT

FILED APRIL 9, 1976

PROBABLE JURISDICTION NOTED JULY 6, 1976

INDEX

(NOTE: The judgment and the opinion below are contained in the jurisdictional statement beginning at pages 26 and 18 respectively. The opinion below has now been reported in 408 F.Supp. 660 (1975)).

Page

1. Relevant docket entries 1

2. Connecticut State Welfare Department Manual, Volume 3, Chapter III, Section 275, on Abortion Services 7

3. Excerpts from Answers to Interrogatories 10

4. Excerpts from Answers to Plaintiffs' Second Interrogatories to Defendants 12

5. Defendant's Motion to Strike Affidavits 15

6. Excerpt from Transcript of Oral Argument on Plaintiffs' Motion for Summary Judgment 16

7. Affidavit of Assistant Director, Health Services 17

8. Affidavit of Susan Roe in Support of Motion for Temporary Restraining Order 20

9. Affidavit of James Kauders, M.D. in Support of Motion for Temporary Restraining Order 22

10. Affidavit of Linda Poe in Support of Motion for Temporary Restraining Order 24

11. Affidavit of Barbara Bye 26

12. Affidavit of James Kauders, M.D. 28

13. Affidavit of Carol C. 30

14. Affidavit of Eugene Corley, M.D. 32

15. Affidavit of Debbie D. 34

16. Affidavit of Joseph Horowitz, M.D. 36

17. Affidavit of Sandra Sereque in Support of Motion for Summary Judgment 39

18. Connecticut Law Journal, September 16, 1975 41

19. Affidavit of Sandra Sereque 44

20. Connecticut Department of Social Services, Form W-601 45

21. Form W-285 46

22. Form W-217 47

23. Form W-217-a 48

24. Affidavit of Linda Poe, filed October 21, 1975 49

25. Affidavit of Barbara Bye, filed October 21, 1975 51

26. Affidavit of Carol C., filed October 21, 1975 53

27. Affidavit of Debbie D., filed October 21, 1975 54

28. Affidavit of Joseph Horowitz, M.D., filed October 21, 1975 56

29. Affidavit of Eugene Corley, M.D. filed October 21, 1975 60

30. Affidavit of Gordon Jonas, M.D., filed October 21, 1975 63

31. Affidavit of Harriet Bograd, filed October 21, 1975 ... 66

32. Affidavit of Patricia Tunstall, filed October 21, 1975 68

33. Affidavit of Mary Hennessy, filed October 21, 1975 .. 69

34. Affidavit of Betty Carrion, filed October 21, 1975 ... 71

35. Excerpt from Memorandum for the United States as *Amicus Curiae*, pp. 9, 10 (submitted at request of the U.S. Court of Appeals (2d Cir.) in *Roe* v. *Norton*, 522 F.2d 928, filed on or about February 1, 1975) 72

1.

RELEVANT DOCKET ENTRIES

Roe v. Norton

JUDGE JON O. NEWMAN

United States District Court

1-22-74

Complaint, Motion for Permission to Proceed in Forma Pauperis and order thereon granting same (Newman, J.), Affidavits, Motion for Temporary Restraining Order, Class Action and Convening Three-Judge Court and Affidavits in Support of Motion, Notice of Motion, Memorandum of Law in Support of Motion for Temporary Order and Class Action, Affidavits of Anonymity, and Motion for Appointment of Person to Serve Process (Julian Nesta) and Order thereon (Markowski, C.), filed and entered this date. Summons issued and together with copies of same and of above papers filed and entered, handed to Attorney Katz. M-1-23-74.

1-25-74

Stipulation of parties that temporary restraining order enter granting relief requested by Plaintiff Susan Roe.

1-25-74

Temporary Restraining Order entered that pending hearing and determination by a statutory three-judge court of the constitutionality of the medical assistance regulations regarding abortions, defendants are restrained (a) from refusing to pay the full, reasonable cost of abortion services prescribed by a qualified physician and provided to plaintiff, Susan Roe; and (b) requiring prior approval, certification of medical necessity, or the fulfillment of any other condition before authorizing payment for said abortion services. Newman, J. M-1-25-74. Copies mailed.

2-11-74

Plaintiff's Interrogatories to be Answered under oath by the defendants pursuant to Rule 33 F.R.C.P. and Request to Produce Documents pursuant to Rule 34 F.R.C.P. filed.

2-13-74

Defendant's Answer to Complaint filed.

4-19-74

Motion for Summary Judgment and Affidavits in Support of Motion for Summary Judgment filed by plaintiff, and Notice of Motion, filed.

5-6-74

Answer to Interrogatories, filed by defendant, Nicholas A. Norton.

5-17-74

Hearing on Plaintiff's Motion for Summary Judgment. Plaintiff moves to amend Temporary Restraining Order to include the class. Court grants T.R.O. form of Order to be submitted this P.M. Decision Reserved on Motion for Summary Judgment. Newman, J. (T.R.O. entered on previous page)

6-12-74

Memorandum of Decision on Plaintiffs' Motion for Summary Judgment entered. Plaintiff Roe and the class she represents, FRCP (23) (b) (2) are entitled to a judgment declaring that Section 275 concerning abortion services is invalid as contrary to the Medicaid provisions of the Social Security Act, and enjoining defendants from enforcing it. This does not mean that the subject of Medicaid payments for abortions is insulated from all state regulation. (See Memo for further details). Newman, J. M-6-12-74 Copies mailed.

6-17-74

Summary Judgment entered in favor of the plaintiff and the class she represents declaring that Connecticut Welfare

Department Public Assistance Program Manual, Vol. 3, Ch. III, section 275, concerning abortion services is invalid as contrary to the Medicaid Provisions of the Social Security Act and defendants, their agents, employees and all persons in active concert or participation with them, are hereby enjoined from enforcing said section 275. Markowski, C. Approved, Newman, J. M-6-17-74. Copies mailed.

6-19-74

Notice of Appeal filed by defendant. Copies mailed to all counsel and to Clerk, U.S. Court of Appeals.

7-5-74

Civil Appeal Scheduling Order of the U.S. Court of Appeals, filed.

7-19-74

Record on Appeal sent U. S. Court of Appeals. Copies of docket entries and Index sent Counsel.

8-22-75

True copy of Judgment and opinion of the U.S. Court of Appeals, reversing judgment of the District Court and remanding action for further proceedings, with costs to be taxed against the appellees, filed. Fusaro, C. M-8-22-75.

9-3-75

Order on Remand, entered. The mandate of the Court of Appeals having been received on August 22, 1975, it now becomes necessary to know whether the defendant Commissioner of Welfare intends to continue enforcing § 275, now that he has been advised that he is not required to do so by federal law. The Commissioner is requested to submit a statement of his position on this question by September 12, 1975, so that a determination can be made as to the need for the convening of a three-judge court. Newman, J. M-9-4-75. Copies mailed to all counsel from Hartford.

9-8-75

Plaintiff's Motion for Convening Three-Judge Court filed.

9-8-75

Plaintiff's Motion for Class Action, Preliminary and Permanent Injunction, and for Summary Judgment.

9-16-75

Plaintiffs' Second Interrogatories to Defendants filed.

9-22-75

Notice of Motion for Temporary Restraining Order, Class Action and Convening of Three-Judge Court, filed by Plaintiffs.

Affidavit of Dr. Joseph Horowitz in Support of Motion for Preliminary and Permanent Injunctions and for Summary Judgment, filed.

Affidavit of Dr. James Kauders in Support of Motion for Temporary Restraining Order, filed.

9-23-75

Order endorsed on Plaintiffs' Motion for the Convening of a Three-Judge Court, GRANTING same. Newman, J. M-9-24-75. Copies mailed.

10-6-75

Designation of Judges entered: Jon O. Newman, Judge; Honorable William H. Timbers, U.S.C.A.; and Honorable Robert C. Zampano, filed. Copies mailed. M-10-6-75.

10-17-75

Motion to Strike Affidavits filed by defendant. Copies to three judges.

10-17-75

Memorandum In Support of Defendant's Motion to Strike Affidavits filed. Copies mailed to three judges.

10-23-75

Answers to Plaintiffs' Second Interrogatories to Defendants filed. Copies handed to Zampano, Newman & Timbers, Judges.

Defendant's Response to Plaintiffs' Motion filed. Copies handed to Zampano, Newman & Timbers, Judges.

Affidavit filed by defendant. Copies handed to Zampano, Newman & Timbers, Judges.

10-24-75

Hearing on Plaintiff's Motion for Summary Judgment before Three Judge Court as follows: "Plaintiff's Exhibit A, filed, Booklet "Relative Value"; Plaintiff's Exhibit B, filed; Defendant's oral motion to strike affidavits — decision reserved. Motion for Summary Judgment — Decision reserved. M-8-24-75.

10-31-75

Memorandum of Decision, entered. (Accordingly), those provisions of Sec. 275 that require certification that an abortion is medically necessary are unconstitutional, and the defendants are hereby enjoined from enforcing them. Further, the defendants are enjoined from requiring, prior to the performance of an abortion, any form of approval as a condition for the reimbursement of the expenses of an abortion performed during the first trimester of pregnancy. Timbers, C.J.; Zampano, D.J.; Newman, D.J. M-12-31-75. Copies mailed. M-12-31-75. Copies to 3 Judges.

1-16-76

Summary Judgment and Order, consented to by parties, entered. Ordered (1) that this action shall be maintained as a class action under F.R.C.P. Sec. 23(b)(2); (2) that judgment be and is hereby entered in favor of the plaintiffs and the class they represent, declaring that Connecticut Welfare

Department, Public Assistance Manual, Vol. 3, Ch. III, Sec. 275 is invalid as contrary to the United States Constitution, insofar as it requires certification that an abortion is medically or psychiatrically necessary, and insofar as it requires, prior to the performance of an abortion, any form of approval or consent or any condition or requirement for the reimbursement of the expenses of an abortion performed during the first trimester of pregnancy; (3) that Defendants, their agents, etc., are hereby enjoined from requiring certain conditions for the reimbursement by Medicaid, etc. (See Judgment for details) Markowski, C. (Newman, J.) Copies mailed. Copies to 3 Judges. M-1-20-76.

2-13-76

Notice of Appeal to the Supreme Court of the United States filed by Defendants. Copies mailed to counsel of record. Copy of docket entries and Notice of Appeal mailed to Supreme Court of United States. Copies to 3 Judges.

2-20-76

Suggestion that Successor in Office (Edward W. Maher) be Substituted, filed by Defendant.

3-18-76

Letter from Attorney General requesting that record be certified and transmitted to the U. S. Supreme Court.

2.

Connecticut State Department of Social Services
Medical Assistance Program

Manual Vol. 3 — Chapter III

MEDICAL SERVICES

275 *Abortion Services*

The Department makes payment for abortion services under the Medical Assistance (Title XIX) Program when the following conditions are met:

1. In the opinion of the attending physician the abortion is medically necessary. The term "Medically Necessary" includes psychiatric necessity.

2. The abortion is to be performed in an accredited hospital or licensed clinic when the patient is in the first trimester of pregnancy. If the patient is *beyond* the first trimester of pregnancy, the abortion must be performed in an accredited hospital and the Chief of Obstetrics and Gynecology certifies in writing that the attending physician has hospital privileges and the abortion will be performed in that hospital.

3. The written request for the abortion is submitted by the patient, and in the case of a minor, from the parent or guardian.

In the case of a committed child, a written consent for the abortion is secured from the Commissioner of the Department of Children and Youth Services as guardian.

4. Prior authorization for the abortion is secured from the Chief of Medical Services, Division of Health Services, Department of Social Services.

Procedures

1. The hospital in which the requested abortion is to be performed, or the clinic which is licensed to perform abortions during the first trimester of pregnancy will submit Form W-217, "Letter Requesting Certification for Reimbursement Abortion", to Health Services in Central Office in which the attending physician certifies that the patient, parent or guardian has requested the performance of an abortion. This is signed by the attending physician in the accredited hospital or licensed clinic when the abortion is performed during the first trimester.

When the abortion is to be performed *beyond* the first trimester of pregnancy, the Form W-217a is completed by both the attending physician and the Chief of Obstetrics and Gynecology. The Chief of Obstetrics and Gynecology certifies that the attending physician has hospital privileges and that the abortion will be performed in that hospital.

2. In addition, Form W-601, "Request for Authorization for Professional Services" must accompany Form W-217 or Form W-217a and should include a statement indicating the medical need for the abortion.

For PA recipients and recipients of services from Unmarried Mothers program, the request will be reviewed by competent medical authority in the Division of Health Services in Central Office, and the hospital or clinic will be notified of the Department's decision by returning two (2) copies of Form W-601 to the hospital, maintaining one (1) copy for its own files.

For Committed Children, completed Forms W-601, 217 and 217a together with Social Data prepared by the D.C.Y.S. Regional Office are submitted to the Department of Children and Youth Services Central Office. Social Data includes all pertinent background information regarding race, age of the

individual, commitment date, the current situation and the individual's wishes and the specific medical necessity.

The packet will then be referred to the Division of Health Services for medical review and recommendation.

After review and recommendation by the Division of Health Services, the complete packet (Forms W-601, W-217 or W-217a and Social Data) will be returned to the Commissioner of Children and Youth Services for his review, decision and signing of the anesthesia permit if he consents to the abortion. If consent is given, Forms W-601, W-217 and W-217a are then returned to the Division of Health Services.

The hospital or licensed clinic is then notified by the Division of Health Services of the Department's decision by forwarding two (2) copies of Form W-601 to the hospital, maintaining one (1) copy for its own files. The Department of Children and Youth Services makes necessary arrangements for the individual's admission to the hospital.

Revised 9-15-75

3.

United States District Court
District of Connecticut

Civil No. N-74-17

SUSAN ROE, ET AL.
Plaintiffs

v.

NICHOLAS NORTON, Et Al.
Defendants

EXCERPTS FROM ANSWERS TO INTERROGATORIES

• • •

4. *QUESTION:* What is the average time lapse between receipt of a request for prior approval in the office of the State Welfare Commissioner and the return of said receipt to the applicant?

ANSWER: Approximately three days from the time of receipt of request until the time it is mailed out to initiating party. (Hospital)

• • •

6A. *QUESTION:* Define the phrase "medically necessary for the patient's health".

ANSWER: The welfare department makes no attempt to define this term. This is a matter left entirely to the attending physician.

• • •

7A. *QUESTION:* Define and describe by example every medical circumstance which is included in the category of "medically necessary for the patient's health" with respect to abortion.

ANSWER: The welfare department makes no attempt to define this term. This is a matter left entirely to the attending physician.

7B. *QUESTION:* Define and describe by example every medical circumstance included in the category of "not medically necessary for the patient's health".

ANSWER: The welfare department makes no attempt to define this term. This is a matter left entirely to the attending physician.

• • •

Dated at Hartford, Connecticut, this 21st day of April, 1974.

NICHOLAS A. NORTON
Commissioner of Welfare
State of Connecticut

BY: .....
HAROLD MCINTOSH, *Assistant Director of Health Services*
Connecticut State Welfare Dept.

4.

(TITLE OMITTED IN PRINTING)

[R. 53]

EXCERPTS FROM ANSWERS TO PLAINTIFFS' SECOND INTERROGATORIES TO DEFENDANTS

• • •

2b. QUESTION: List and describe any and all differences between this regulation and defendants regulations regarding abortion as of January 22, 1974.

ANSWER: The August 26, 1975, revision differs from the policy as of January 22, 1974, in the following respects:

1) The Chief of Obstetrics/Gynecology is no longer required to sign the attending physician's certificate of medical necessity;

• • •

2) The latter revision, unlike the policy in effect in January, 1974, distinguishes between an abortion being sought in the first trimester of the pregnancy, and an abortion to be performed beyond the first trimester.

Form W-217 (Appendix D) is used for first trimester abortions. It contains only the certification of medical necessity to be signed by the attending physician.

Form W-217a (Appendix E) is used for abortions which have progressed beyond the first trimester of pregnancy. In addition to the attending physician's certificate contained on Form W-217, Form W-217a also contains a certification by the Chief of Obstetrics and Gynecology that the attending physician has hospital privileges at the indicated hospital, and that the abortion will be performed in that hospital.

3a. QUESTION: Define the following phrases as used in said amended § 275:

"medically necessary"
"therapeutic abortion services"

ANSWER: The Department of Social Services makes no attempt to define the term "medically necessary." This is a matter left entirely to the medical judgment of the patient's own attending physician.

The term "therapeutic abortion services" is defined in Index 275 of the policy manual as an abortion service covered under the Title XIX when "[T]he abortion is recommended as medically necessary by the attending physician . . ."

3b. QUESTION: Define the phrase "medically necessary for the patient's health" as used in forms W-217 and W-217a;

ANSWER: See Answer to Question 3a.

• • •

7. QUESTION: From August 26, 1975, to the date of these Interrogatories, how many requests for reimbursement for abortion have been refused by any of the defendants, their agents or employees? What was the reason for such refusal?

ANSWER: Since August 26, 1975, to October 20, 1975, two hundred forty-one (241) requests for payment for abortions under the Title XIX Program have been approved; five (5) requests have been rejected because Form 601 and/or Form W-217 had not been completed.

8. QUESTION: During the period June 23, 1975, to August 26, 1975, how many abortions were reimbursed by the medical assistance program and at what cost to the state?

ANSWER: For the period from July 1, 1973, thru June 16, 1974, payment was made for a total of one thousand four hundred and ten (1,410) abortions under the Title XIX program. After the U.S. District Court entered an order, on June 16, 1974, enjoining the enforcement of Index 275 of the defendant's Policy Manual, the Department no longer maintained a record of the number of abortions paid for under Title XIX. It would be possible to retrieve this information from the department's computer, but it would require the writing of a special program — a burdensome task to impose on a Department which is experiencing a continually increasing workload.

• • •

Dated at Hartford, Connecticut, this 21st day of October, 1975.

EDWARD W. MAHER
Commissioner of Social Services

BY: .....
HAROLD V. MCINTOSH
Assistant Director, Health Services

5.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

[R. 44]

MOTION TO STRIKE AFFIDAVITS

Pursuant to Rule 7(b)(1), Federal Rules of Civil Procedure, the defendant moves to strike from the court record, Exhibits A through O which were filed by the plaintiffs together with Plaintiffs Memorandum of Law In Support of Motion For Summary Judgment on or about October 2, 1975, on the ground that the testimony contained therein is inadmissible, and is in contravention of Rule 43(a) of the Federal Rules of Civil Procedure, which requires that the testimony of witness be taken orally in open court.

CARL R. AJELLO
Attorney General

BY: .....
EDMUND C. WALSH
Assistant Attorney General

(Filed October 17, 1975)

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

6.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

[R. 54]

EXCERPT FROM TRANSCRIPT OF ORAL ARGUMENT ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT p. 28

(OCTOBER 24, 1975)

• • •

MR. WALSH: . . . I have an addition, if Your Honor please, a motion to strike the affidavits submitted by the plaintiffs with their motion for summary judgment. I don't object to the affidavits in the courts evaluating the summary judgment issue of whether or not there is a legal issue but I do think they are inadmissible for purposes of determination on the merits.

JUDGE TIMBERS: The Court has decided, Mr. Walsh, as a matter of procedure to reserve decision on your motion to strike. We will rule on that at the same time we rule on the summary judgment motion. I think we have your position well in mind set forth in the papers.

MR. WALSH: Thank you.

JUDGE TIMBERS: Anything further?

• • •

7.

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

My name is Harold V. McIntosh, and I am employed by the Department of Social Services, State of Connecticut at 110 Bartholomew Avenue, Hartford, Connecticut, as Assistant Director of Health Services. In that capacity I am intimately familiar with the operation of the Department's operation of its Title XIX Medicaid Program, and also with the requirements for payment for abortion thereunder, when such an abortion is required for the patient's health.

I have read the Plaintiffs' Memorandum of Law In Support of Motion for Summary Judgment in this case and I make the following statements in response thereto:

1). I know of no instance where a woman, eligible under the Program, was deprived of a medically necessary abortion operation, so certified by her physician, because of an undue delay in the processing of her application. When the department is notified by telephone by an attending physician that he believes that any delay in performing the abortion operation would pose an increased risk to the patient's health, the Department of Social Services will give oral approval to that physician immediately, by telephone, of the patient's application, on condition that the physician will state that he has signed the certificate of medical necessity and will forward it to the department;

2). Contrary to the assertions contained in the Plaintiffs' Memorandum of Law, abortions which are required for the patient's health are not singled out from all other

services by requiring prior approval therefor. There are a great many services provided under the Medicaid services which require prior approval from the Department;

3). Despite language contained in the Department's current policy on abortions which plaintiffs' have interpreted otherwise, the Department of Social Services *accepts at face value* the certification of medical necessity of the patient's attending physician.

There is no "second-guessing" of the attending physician's certification, nor is there any "review" of his medical judgment. This has been the practice of the Department, for at least since June, 1974 when the U.S. District Court enjoined enforcement of the Department's requirement that an abortion be certified as necessary for the health of the patient;

4). The Medicaid program in Connecticut provides only for necessary medical services, except where federal law mandates that certain other services be provided, as, for example, family planning services and services for persons under 21 years of age under the Early Periodic Screening, Detection and Treatment Program (EPSDT). But even where services are medically necessary, there are exclusions and limitations upon some services even though they are medically necessary.

5). From August 26, 1975 when the Department re-instated, after the decision of the U.S. Court of Appeals, its policy of requiring a certificate of medical necessity from the patient's physician before an abortion would be paid for under the Program, a total of 241 medically necessary abortions have been approved for payment under the

State's Title XIX program, and five (5) have been disapproved for failure to comply with the Department's policy.

Dated at Hartford, Connecticut this 22nd day of October, 1975.

HAROLD V. MCINTOSH
Assistant Director, Health Services
Connecticut Department of Social Services

8.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER, CLASS ACTION AND CONVENING THREE-JUDGE COURT

SUSAN ROE, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action.

2. I am a real person, twenty-six (26) years of age, a citizen of the United States and a resident of Bridgeport, Connecticut, where I reside with my three children, Ages 9 years, 7 years, and 6 months.

3. SUSAN ROE is not my true legal name. I have adopted that name solely for the purposes of this lawsuit to maintain anonymity.

4. I am unmarried, have recently discovered that I am pregnant and have made the decision not to carry my pregnancy through to term because of the burden and disruption it would cause in my personal life and the lives of my children.

5. My six month old suffers from a defect in one lung and requires periodic medical care, becomes ill easily, and so must be carefully supervised and cared for by me.

6. I am a recipient of Aid to Dependent Children from the State of Connecticut and I am eligible for medical services under the Medical Assistance Program.

7. I have requested an abortion to be performed by Doctor James Kauders at Park City Hospital, but I have not been able to obtain this service because my doctor does not believe that my abortion is medically necessary and I do not have enough money to pay for an abortion myself.

8. My inability to obtain an abortion has caused and will continue to cause me severe emotional anguish.

.....

SUSAN ROE

Sworn to and subscribed before me this 21st day of January, 1974.

(JURAT OMITTED IN PRINTING)

9.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER, CLASS ACTION AND CONVENING THREE-JUDGE COURT

JAMES KAUDERS, M.D., being duly sworn, deposes and says:

1. I am a physician specializing in the practice of obstetrics and gynecology in Bridgeport, Connecticut, and I am on the Obstetrics and Gynecology staff of Park City Hospital in Bridgeport.

2. On January 1, 1974, I examined SUSAN ROE, and determined her to be approximately seven weeks pregnant.

3. She requested me to perform an abortion, and I agreed since I found no medical reason indicating that this procedure would be injurious to her health.

4. I stated that my fee for performing the abortion would be ——— and that I would apply for payment in this amount from the State Welfare Department.

5. Ms. ROE'S abortion is a medically approrpriate procedure given her present condition. I do not believe it is medically necessary in the sense that her life or health will be threatened if the abortion is not performed.

6. It is the practice of all physicians associated with Park City Hospital to [illegible]le abortions within the first twelve

weeks of pregnancy if possible; procedures used for such abortions involve a significantly lower risk to the patient than do the procedures which must be used when abortions are done at any later stages of pregnancy.

7. Park City Hospital will not provide abortions to women who are more than —— weeks pregnant except in extremely unusual cases.

.....

JAMES KAUDERS, M.D.

Sworn to and subscribed before me this —— day of January, 1974.

(JURAT OMITTED IN PRINTING)

10.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER, CLASS ACTION AND CONVENING THREE-JUDGE COURT

LINDA POE, being duly sworn, deposes and says:

1. I am the mother and next friend of MARY POE, a plaintiff in the above entitled action.

2. My daughter and I are real persons, citizens of the United States, and residents of Bridgeport, Connecticut.

3. MARY and LINDA POE are not our true legal names. We have adopted those names solely for the purposes of this lawsuit to maintain anonymity.

4. My daughter, who is sixteen years old, discovered in September, 1973, that she was pregnant.

5. She informed me of this fact, and stated that she did not wish to carry her pregnancy to term because of the disruption this would cause in her life.

6. She is an excellent student in her junior year at Harding High School in Bridgeport, Connecticut, and was very anxious to continue her education without interruption.

7. I am a recipient of Aid to Dependent Children from the State of Connecticut and I am eligible for medical assistance on behalf of myself and my children.

8. My daughter obtained an abortion at Park City Hospital on October 10, 1974.

9. The Welfare Department has refused to reimburse Park City Hospital for the cost of her abortion because her doctor could not state that the procedure was medically necessary.

10. I am currently indebted to Park City Hospital in the amount of $244.20.

.....

LINDA POE

Sworn to and subscribed before me this 22nd day of January, 1974.

(JURAT OMITTED IN PRINTING)

11.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

BARBARA BYE, being duly sworn, deposes and says:

1. I am a real person, eighteen (18) years of age, a citizen of the United States and a resident of Bridgeport, Connecticut.

2. Barbara Bye is not my true legal name. I have adopted that name solely for the purposes of this lawsuit to maintain anonymity.

3. I have one child, a daughter, age 2½.

4. I am divorced, have recently discovered that I am pregnant and have made the decision not to carry my pregnancy through to term because of the burden and disruption it would cause in my personal life and the lives and well-being of my child.

5. I do not wish to bear an illegitimate child, who would then become dependent for its support on public assistance.

6. I am a recipient of Aid to Dependent Children from the State of Connecticut and I am eligible for medical services under the Medical Assistance Program.

7. I have requested an abortion to be performed by Doctor James Kauders at Park City Hospital, but I have not

been able to obtain this service because my doctor does not believe that my abortion is medically necessary and I do not have enough money to pay for an abortion myself.

8. My inability to obtain an abortion has caused and will continue to cause me severe, emotional anguish.

.....

BARBARA BYE

Sworn to and subscribed before me this 19th day of September, 1975.

(TITLE OMITTED IN PRINTING)

12.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

JAMES KAUDERS, M.D., being duly sworn, deposes and says:

1. I am a physician specializing in the practice of obstetrics and gynecology in Bridgeport, Connecticut, and I am on the Obstetrics and Gynecology staff of Park City Hospital in Bridgeport.

2. On September 19, 1975, I examined Barbara Bye and determined her to be approximately six weeks pregnant.

3. She requested me to perform an abortion, and I agreed since I found no medical reason indicating that this procedure would be injurious to her health.

4. I agreed to apply for payment from the State Welfare Department.

5. Ms. Bye's abortion is a medically appropriate procedure given her present condition. I do not believe it is medically necessary in the sense that her life or health will be threatened if the abortion is not performed.

6. It is, in my opinion, necessary that the abortion be performed forthwith.

7. It is my practice to schedule abortions only within the first twelve weeks of pregnancy; procedures used for such

abortions involve a significantly lower risk to the patient than do the procedures which must be used when abortions are done at any later stage.

8. I will not provide abortions to women who are more than twelve weeks pregnant except in extremely unusual cases.

.....

JAMES KAUDERS, M.D.

Sworn to and subscribed before me this —— day of September, 1975.

(JURAT OMITTED IN PRINTING)

13.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Carol C. a plaintiff in the above-entitled action, deposes and says:

1. I am a resident of Bridgeport, Connecticut, and I am eligible for medicaid from the State of Connecticut for all medical care.

2. I recently discovered that I am pregnant, and I have requested Dr. Eugene Corley of Bridgeport to perform an abortion.

3. Dr. Corley informed me that medicaid would not pay the costs of an abortion, since it is not medically necessary for my health; he told me that I would have to pay for his fee and for all hospital services myself.

4. I am divorced and the mother of three children, ages 6, 7 and 9, and I do not wish to bear another child at this time.

5. I have worked for the past year, and I earn $96.00 per week; I receive $200.00 per month in Aid to Families With Dependent Children.

6. I feel that if I do not have another child, I can im-

prove my earning capacity and become independent of public assistance.

.....

CAROL C.

Sworn to before me this 23rd day of September, 1975.

(JURAT OMITTED IN PRINTING)

14.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Eugene Corley, M.D., deposes and says:

1. I am a physician specializing in the field of obstetrics and gynecology in Bridgeport, Connecticut.

2. I am privileged to practice surgery at Park City Hospital in Bridgeport.

3. a. I have recently examined Carol C. and found her to be approximately eight (8) weeks pregnant.

b. Ms. C. requested that I perform an abortion to terminate her pregnancy and told me she is eligible for medicaid.

c. I find no medical or other reason why this abortion should not be performed, however, there will be no danger to Ms. C's health should she carry her pregnancy to term.

d. I cannot certify to the Department of Social Services that Ms. C's abortion is medically necessary to her health, without violating medical ethics.

e. I believe that abortions performed later than the 10th week of pregnancy carry signficantly greater risk of complication than do those performed earlier.

f. It is, therefore, imperative that I schedule Ms. C. for her abortion immediately.

4. a. I have also recently examined Debbie D., who I believe is in approximately her 5th week of pregnancy.

b. Ms. D requested that I perform an abortion to terminate her pregnancy.

c. There is no medical reason why this abortion should not be performed, however, there will be no danger to Ms. D's health should she carry her pregnancy to term.

d. I cannot certify to the Department of Social Services that Ms. D's abortion is necessary to her health, without violating medical ethics.

e. Because I believe that abortion should be performed as early as possible in the pregnancy, in order to minimize the risks to the patient, I wish to schedule Ms. D. for an immediate abortion.

5. It is my policy not to perform abortions after the twelfth week of pregnancy except in very unusual circumstances.

6. It is my belief that any delay in performance of abortion services for Ms. C. or Ms. D. would inhibit me from providing them with quality medical care.

.....
EUGENE CORLEY, M.D.

Sworn to before me this 23rd day of September, 1975.

(JURAT OMITTED IN PRINTING)

15.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Debbie D., a plantiff in the above-entitled action, deposes and says:

1. I am 19 years old and a citizen of Bridgeport, Connecticut.

2. I recently consulted Dr. Eugene Corley in Bridgeport, and discovered that I am pregnant.

3. I am not married, and I have a six month old child.

4. I do not wish to bear another child at this time, and I have requested Dr. Corley to perform an abortion.

5. Dr. Corley informed me that since there is no medical need for my abortion, medicaid will not pay his fee or the necessary hospital costs, and that, therefore, I would have to guarantee payment myself.

6. I am eligible for medicaid for all other medical care for myself and my child.

7. My income consists of $48.90 per month in Aid to Families With Dependent Children and Social Security payments; I have no means of paying for an abortion at this time.

8. I am a student at Bassick High School in Bridgeport, and am anxious to finish school so that I can support myself and my child.

9. Giving birth to another child would seriously interfere with my ability to become self-supporting and independent of public assistance.

.....

DEBBIE D.

Sworn to before me this 23rd day of September, 1975.

(JURAT OMITTED IN PRINTING)

16.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY AND PERMANENT INJUNCTIONS AND FOR SUMMARY JUDGMENT

JOSEPH HOROWITZ, M.D., being duly sworn, deposes and says:

1. I am a physician specializing in the practice of obstetrics and gynecology in Bridgeport, Connecticut, and I am Chief of the Obstetrics and Gynecology staff at Park City Hospital in Bridgeport.

2. Abortion is a service ordinarily furnished at Park City Hospital whenever a patient's attending physician determines that such a procedure should be performed.

3. I have read and am familiar with Section 275 of the Connecticut State Department of Social Services Manual, Volume 3, Chapter III, effective August 26, 1975, as well as the Memorandum from James Morrison to all Chiefs of Obstetrics and Gynecology, dated August 26, 1975.

4. I am familiar with Social Services form W-601, requesting prior authorization, and with forms W-217 and W-217a.

5. It is my professional opinion that the terms "medically necessary" in section 275, and "medically necessary for the patient's health" in forms W-217 and W-217a, refer to situations in which the attending physician believes there will be an

adverse effect upon the physical or mental condition of the patient if the pregnancy is carried to term.

6. When a patient determines that she does not wish to bear a child for personal reasons, and there is no medical reason why she should not carry her pregnancy to term, I cannot attest that an abortion is medically necessary for the patient's health, without violating my professional code of ethics.

7. I will, therefore, not fill out forms W-601, W-217 or W-217a in a case where a patient desires an abortion only for personal or family planning reasons, and I would instruct members of my staff not to do so in similar circumstances.

8. An abortion for family planning reasons is, of course, medically necessary in order to terminate an unwanted pregnancy, in the same sense as other forms of obstetrical care are medically necessary when a patient decides to carry a pregnancy to term.

9. Section 275 additionally requires certification that the patient has requested the abortion, and, for second trimester abortions, that the attending physician has hospital privileges and the abortion will be performed in a hospital.

10. Park City Hospital requires the consent of the patient to all surgical procedures, and I request all patients to sign this form before any surgery is performed.

11. No physician would be permitted to perform an abortion or any other procedure at Park City Hospital unless he or she had privileges at that hospital.

12. To my knowledge, there is no other procedure for which the Department of Social Services requires certification of consent, or of the physician's hospital privileges before it will provide payment.

13. An abortion must be performed as early in pregnancy as possible, in order to minimize the risk to the patient.

14. The requirement that prior approval be obtained before medicaid reimbursement for abortion causes unnecessary delay in performance of abortions for medicaid recipients, and seriously interferes with my ability to provide quality medical care.

.....

JOSEPH HOROWITZ

Sworn to before me this —— day of September, 1975.

(JURAT OMITTED IN PRINTING)

17.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

SANDRA SEREQUE, being duly sworn deposes and says:

1. I am the manager of Patient Accounts at Park City Hospital in Bridgeport, Connecticut.

2. It is part of my duties at Park City Hospital to interview patients requiring elective surgery as to their means of payment, and to apply on behalf of persons eligible for Medicaid for payment from the State Welfare Department.

3. I am familiar with procedures required to obtain Medicaid reimbursement for all hospital procedures, including abortion services.

4. Patients requiring abortion services at Park City Hospital are as a general rule scheduled for such services within four to seven days.

5. During the past year, I have interviewed several Medicaid recipients who wish to have abortions performed at Park City Hospital.

6. January 14, 1974, I applied for prior approval for reimbursement for an abortion performed on plaintiff Mary Poe. Approval was rejected by the Welfare Department on January 21, 1974. On at least six other occasions, I have applied for prior approval for abortions for Medicaid recipients.

7. Because the members of the obstetrics and gynecology staff at Park City Hospital did not sign the required attestations that the abortions were medically necessary for the patients' health, the Welfare Department has in all cases refused reimbursement for abortion services.

8. There is a time lapse of approximately two weeks between the time I submit Form W-601, requesting prior approval, and the time when that form is returned to me indicating whether or not approval has been granted.

9. When I interview a Medicaid patient who wishes to obtain an abortion, I inform her that she must provide some means of payment other than Medicaid, because the Welfare Department will not provide payment without an attestation of medical necessity.

10. On information and belief prior approval is not required for Medicaid reimbursement for any inpatient hospital procedure other than abortion.

. . . . . .

SANDRA SEREQUE

Sworn to before me this 18th day of April, 1974.

(JURAT OMITTED IN PRINTING)

18.

United States District Court

District of Connecticut

CONNECTICUT LAW JOURNAL

September 16, 1975 Pages 35 and 39

DEPARTMENT OF SOCIAL SERVICES

Notice of Intent to Adopt Regulations

In accordance with the provisions of subsection (a) of section 4-168 of the general statutes, as amended, the Commissioner of Social Services hereby gives notice that he intends to adopt this regulation relating to abortion services. The regulation is proposed under the authority of provisions of Part IV of Chapter 302 of the general statutes (Medical Assistance Program).

Parties wishing to present their views regarding this matter must do so within twenty days following the publication of this notice. These may be submitted in writing to the State Commissioner of Social Services, 110 Bartholomew Avenue, Hartford, Connecticut 06115.

• • •

The proposed regulation set forth below as Exhibit "A" is hereby made part of this notice:

EXHIBIT "A"

The regulations of Connecticut State agencies are amended by adding section 17-134d-2b as follows:

Sec. 17-134d-2b. Abortion services

(a) Definition. As used in this regulation, the term "medically necessary" includes psychiatrically necessary.

(b) Payment by the department for services under the Medical Assistance Program (Title XIX) will include payment for abortion services, provided that the payment will be made only for an abortion which is medically necessary, and, in the case of a minor, after written consent to such abortion has been obtained. Prior authorization from the department will be a prerequisite for such payment and shall be made upon consideration of the following:

(1) The abortion shall be requested in writing by the recipient. In the case of a pregnancy within the first trimester, the request for authorization shall be accompanied by a written statement by the attending physician that the abortion is medically necessary and that the abortion will be performed in an accredited hospital or a licensed clinic. In the case of a pregnancy which is beyond the first trimester, the request for authorization shall be accompanied both by the attending physician's written statement that the abortion is medically necessary and by a written certification by the Chief of Obstetrics and Gynecology of an accredited hospital that the abortion will be performed in that hospital and that the attending physician has hospital privileges to practice therein.

(2) If the recipient is a minor, the parent or guardian shall give written consent to the abortion. If the recipient is a committed child, the Commissioner of the Department of Children and Youth Services as guardian shall give the written consent.

Statement of Purpose: To prescribe the general policies of the Department of Social Services as to abortion services.

EDWARD W. MAHER
Commissioner

• • •

19.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

SANDRA SEREQUE, being duly sworn deposes and says:

1. I am the manager of Patient Accounts at Park City Hospital in Bridgeport, Connecticut.

2. It is part of my duties at Park City Hospital to apply for payment by the Welfare Department for services rendered to patients eligible for medical assistance from the State of Connecticut.

3. In the course of my duties I have frequently applied for payment for tubal ligations at the hospital on women eligible for medical assistance.

4. The procedure for obtaining said payment is to submit a completed Form W-285.

5. I have never submitted Form W-601, a request for prior approval, for payment for a tubal ligation.

6. The Welfare Department consistently provides payment for tubal ligation when Form W-285 is correctly submitted.

.....
SANDRA SEREQUE

Sworn to before me this 3rd day of June, 1974.

(JURAT OMITTED IN PRINTING)

20.

FORM W-601

REQUEST FOR AUTHORIZATION
PROFESSIONAL SERVICES NEEDING PRIOR APPROVAL
W-601 REV. 3-70

630471

CONNECTICUT STATE WELFARE DEPARTMENT

Enter Welfare Case Number as shown on right of Medical Services Identification Card.

1. This authorization is valid only if recipient presents current Medical Services Identification Card at time of receiving each service enumerated herein.
2. Mail all 4 copies to State Welfare Department District Office.
3. Do not remove carbons.

ATTENDING CONSULTANT

ACUTE CHRONIC

INITIAL DIAGNOSTIC IMPRESSION

PLEASE INDICATE
1 SERVICES RECOMMENDED
2 NEED FOR SERVICES

TOTAL NUMBER OF VISITS REQUIRED

PERIOD COVERED BY REQUEST

FOR CONSULTANT STATE

NAME OF PRACTITIONER REQUESTING CONSULTATION

ADDRESS

SIGNATURE OF PRACTITIONER OR ADMINISTRATOR

DATE

FOR WELFARE DEPT. ONLY

ELIGIBLE YES NO

REVIEWED BY

DATE

APPROVED FOR VISITS

NOT APPROVED

NOT TO EXCEED

OTHER SERVICES APPROVED

AUTHORIZED BY

TITLE

DATE

NOTE

21.

FORM W-285

Please type or print

HOSPITAL ADMISSION AND DISCHARGE NOTICE

AT ADMISSION ☐ FINAL INVOICE ☐ INTERIM INVOICE HAB 266312

1 Complete Items 1 through 10
2 Please do not remove carbon paper
3 Mail Form 1, 2, 3, including carbon paper between, under cloth, to the address shown immediately below

4 Form 1 and 2 will be returned to the Hospital for Discharge Data and final invoice
5 If liability is accepted by the Welfare Department on Form 1 and 2, follow instructions at bottom of page for interim invoice, if any

TO: Connecticut State Welfare Department, Medical Payments Section, 165 Capitol Avenue, Hartford, Conn. 06115

ADMISSION DATA

1 Name ... 4 Date of Birth
3 NAME OF FACILITY OR ADDRESS ADMITTED FROM (Hospital, Home, etc.)
5 Sex ☐ M ☐ F
6 Hospital, Name and address, Zip Code — PROVIDER NO.
AT DISCHARGE
1 Complete Parts 1, 2, and 3, Items 19 through 24, and INVOICE section 8 FINAL INVOICE
2 Please remove carbon paper
3 Mail Parts 1 and 2 to the address shown above
8 ADMITTING DIAGNOSIS
9 BLUE CROSS AVAILABLE ☐ YES ☐ NO
10 BLUE CROSS MEMBER NO.
11 PATIENT MAY HAVE ACCIDENT OR LIABILITY CLAIM ☐ YES ☐ NO
12 OTHER INSURANCE AVAILABLE ☐ YES ☐ NO
NAME OF INSURANCE COMPANY
POLICY NO.
13 OTHER SOURCE(S) OF PAYMENT
14 DATE ADMITTED
15 PHYSICIAN SERVICES ☐ PRIVATE ☐ GENERAL STAFF
16 SIGNED (Physician) Subject to conditions on reverse side
DATE

WELFARE DEPARTMENT ACTION

17 Liability accepted by Welfare Department at Established Rates for all charges not available from other sources subject to determination of eligibility ☐ YES ☐ NO
18 SIGNED BY (For Welfare Department)
DATE
19 REMARKS

DISCHARGE DATA

20 DISCHARGE DIAGNOSES
21 DATE DISCHARGED
SIGNED BY (For Hospital)
DATE

INVOICE

SERVICES FROM (Date)
THROUGH (Date)
NO. OF DAYS (Use 1.33)
AT
$
TOTAL
12 ☐ Yes ☐ No **NO. OF DAYS EXCESS IS FROM ATTACH APPROVED COPY OF W-288 (INTRA WARD AUTHORIZATION)** HAB
In the event that the patient or any medical insurance policy are available directly to the beneficiary and/or his legally liable relatives, no payment can be billed to the Welfare Department until the Hospital has applied the proceeds of such policy to its charges.

CREDITS
SOURCE — AMOUNT
SOURCE — AMOUNT
TOTAL CREDITS $
NET AMOUNT DUE FROM WELFARE DEPT $

INTERIM INVOICES

1 Use an additional set of these forms
2 X the INTERIM INVOICE block above
3 Complete only items 1, 2, 7, and INVOICE (when Enter HAB No. of Admission Memo
4 Mail part 1 to the Welfare Department address above

22.

FORM W-217

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

CERTIFICATION FOR REIMBURSEMENT FOR PERFORMANCE OF ABORTIONS ON PATIENTS ELIGIBLE FOR TITLE XIX (FIRST TRIMESTER)

Date .....

State Department of Social Services
110 Bartholomew Avenue
Hartford, Connecticut 06105

Attention:

Dear

I hereby certify that .....
(Name of Patient)

has requested performance of an abortion. She is in her first trimester of her pregnancy. As attending physician it is my opinion that performance of this abortion is medically necessary for the patient's health. This abortion will be performed

at ..... on .....
(Hospital) (Date)

.....
Signature of Attending Physician

23.

FORM W-217a

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

CERTIFICATION FOR REIMBURSEMENT FOR PERFORMANCE OF ABORTIONS ON PATIENTS ELIGIBLE FOR TITLE XIX
(SECOND OR THIRD TRIMESTER)

Date .....

State Department of Social Services
110 Bartholomew Avenue
Hartford, Connecticut 06105

Attention:

Dear

I hereby certify that .....
(Name of Patient)
has requested the performance of an abortion. She is beyond the first trimester of her pregnancy. As attending physician it is my opinion that the performance of the abortion is medically necessary for the patient's health.

.....
Signature of Attending Physician

Dr. ..... has privileges to practice at
..... and the abortion will be
(Hospital)

performed in this hospital on .....
(Date)

.....
Chief Obstetrics - Gynecology

24.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Linda Poe of Bridgeport, Connecticut deposes and says:

1. I am over 18 years of age.

2. I believe in the obligation of an oath.

3. I am the mother and next friend of Mary Poe, a plaintiff in the above entitled action.

4. In September, 1973, my daughter, Mary Poe, became pregnant.

5. She was sixteen years of age and a student at Harding High School at that time.

6. She obtained an abortion at Park City Hospital because she did not want to bear a child.

7. She intended to continue her education after graduation, so that she could support herself and contribute to the support of the rest of our family.

8. My daughter was and still is in excellent health and did not believe she would suffer physically or that her mental condition would be impaired if she had a child.

9. Therefore her physician did not certify that her abortion was medically necessary, and the State Department of Social Services refused to pay for his or the hospital's services.

10. I myself tried to pay these bills, but was unable to do so and still support my children and myself, on public assistance from the State of Connecticut.

11. If my daughter had not been able to obtain an abortion her child would have become a recipient of aid to families with dependent children and she would have had to leave school to care for it.

12. My daughter graduated from Harding High School in Bridgeport, Connecticut in June, 1975.

13. She is now a first year student at Sacred Heart University in Bridgeport.

14. She is also employed part time as a secretary.

15. I believe that my daughter could never have completed school and gone on to college if she had not been able to have an abortion in 1973.

LINDA POE

Sworn to before me this 20th day of October, 1975.

(JURAT OMITTED IN PRINTING)

25.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Barbara Bye, a plaintiff in the above entitled action, being duly sworn, deposes and says:

1. I am 18 years of age.

2. I believe in the obligation of an oath.

3. I am a resident of Bridgeport, Connecticut and I have one child, a daughter, age 2½ years.

4. I am divorced and am dependent on medical assistance from the State of Connecticut for all my medical needs.

5. In September, 1975 I discovered that I was pregnant and I requested my physician, Dr. James Kauders of Bridgeport, Connecticut, to perform an abortion.

6. I am a healthy person, and I knew my health would not suffer if I were to bear another child.

7. My daughter and I live with my parents, my four sisters and two brothers.

8. If I were to have another child it would cause many problems for the rest of my family, and be very emotionally upsetting for both my parents.

9. Dr. Kauders told me that medicaid would not pay for my abortion unless he could certify that it was medically necessary for my health.

10. Since he and I both believed that neither my physical nor mental health would suffer if I were to have the baby, he did not claim that my abortion was medically necessary.

11. I was able to obtain an abortion only after this Court issued its temporary restraining order of September 23, 1975 compelling the Department of Social Services to pay Dr. Kauders and Park City Hospital for their services.

BARBARA BYE

Sworn and subscribed to before me this 16th day of October, 1975.

(JURAT OMITTED IN PRINTING)

26.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Carol C., a plaintiff in the above entitled action, deposes and says:

1. I am over 18 years of age.

2. I believe in the obligation of an oath.

3. I became pregnant for the fourth time in September 1975.

4. My three other children are 6, 7 & 9 years old and I am dependent on medicaid for all our medical needs.

5. I did not wish to bear a child because I had just begun to work as a visting nurse and wanted to pursue a nursing career.

6. I believe that my mental and physical health would not have suffered if I had not been able to obtain an abortion.

7. I did not want my doctor to claim that my abortion was medically necessary when this was not the case.

8. I was able to obtain an abortion only after this Court granted a temporary restraining order compelling payment for my abortion without certification of medical necessity.

CAROL C.

Sworn to before me this 16th day of October, 1975.

(JURAT OMITTED IN PRINTING)

27.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Debbie D., a plaintiff in the above entitled action, deposes and says:

1. I am 19 years old, a citizen of Bridgeport, Connecticut and the mother of a six month old child.

2. In September, 1975, I consulted with Dr. Eugene Corley of Bridgeport, Connecticut, and discovered that I was pregnant.

3. I am unmarried, and I am completely dependent upon medicaid from the State of Connecticut for all my medical needs.

4. Dr. Corley informed me that medicaid would not pay for an abortion unless he could certify that it was necessary for my physical or mental health.

5. I did not believe that my health would actually suffer if I were to bear another child, and I did not want to lie or have Dr. Corley lie to obtain medicaid payment.

6. I did obtain an abortion when this court issued its temporary restraining order of September 23, enjoining the state from refusing to pay for my abortion.

7. I wanted an abortion because I am trying to complete high school and care for my child at the same time.

8. I did not feel that I could care for two young children and still continue my schooling.

9. Were I to have another child at this time, it would mean I would be dependent on public assistance for several more years.

DEBBIE D.

Sworn and subscribed to before me this 16th day of October, 1975.

(JURAT OMITTED IN PRINTING)

28.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

JOSEPH HOROWITZ, M.D., of Bridgeport, Connecticut deposes and says:

1. I am over 18 years of age.

2. I believe in the obligation of an oath.

3. I am a physician licensed to practice medicine and surgery in the State of Connecticut.

4. I specialize in the practice of obstetrics and gynecology in Bridgeport, Connecticut, and I am Chief of the Obstetrics and Gynecology staff at Park City Hospital in Bridgeport.

5. As part of my practice I perform abortions in Park City Hospital.

6. It is my professional opinion that the safest time to perform any abortion is prior to the twelfth week of pregnancy and abortion should be performed as early in pregnancy as possible because the procedure is simpler when the tissue mass in the uterus is less.

7. During this time period, abortions are accomplished by means of a method known as suction curettage in which a hollow tube is inserted through the woman's cervix and by suction the fetus, placenta, and other tissue are drawn out through the tube.

8. The procedure is done under local anesthesia, requires no overnight hospital stay, and generally takes between ten and fifteen minutes, in addition to preparatory laboratory work.

9. After the twelfth week of pregnancy abortion is accomplished by removing the amniotic fluid from the uterus and injecting in its place a substance which induces uterine contractions, or labor and thereby aborts the fetus.

10. Until recently a saline solution was injected into the uterus; at present most physicians prefer to inject the hormone prostaglandin to stimulate contractions.

11. There is a delay of 12 to 30 hours between injection of prostaglandin and the onset of labor. During this period the patient must remain in the hospital under observation.

12. The likelihood of complications associated with abortion is greater when performed after the twelfth week of pregnancy.

13. In up to 50% of all cases, the placenta is not fully expelled by the patient and must be removed, either manually or surgically, in some cases under a general anesthesia.

14. The injection and subsequent surgery carry the risk of infection to the patient.

15. Many patients experience nausea and vomiting from prostaglandin; saline injections have led to heart failures in some cases.

16. Because of the risks involved, I do not perform any abortions on women who are more than twelve weeks pregnant.

17. I have read and am familiar with section 275 of the

Connecticut Manual of Public Assistance, dealing with medicaid reimbursement for abortion.

18. In my opinion an abortion is not medically necessary unless there is some indication that her physical or mental health will deteriorate in some way if she carries a pregnancy to term.

19. Examples of such patients would be those with a history of chronic hypertension or kidney disease, or those who had suffered a mental breakdown after a previous pregnancy.

20. I believe cases where an abortion is medically necessary are less than 5% of all abortions.

21. The vast majority of abortions are requested for social or economic reasons; most women are capable of accepting and caring for another child without deteriorating either psychologically or physically.

22. To certify to medical necessity for abortions is to engage in a subterfuge to circumvent the state's imposition of its judgment on the abortion question.

23. I do not believe the state should force physicians to take dishonest positions in order to provide adequate care to medicaid recipients.

24. Even if I had a patient for whom I could certify that an abortion was medically necessary, the need to obtain prior authorization means that I must delay a procedure which should be performed as soon after diagnosis as possible.

25. It is my practice to schedule abortions within 48 to 72 hours of a diagnosis of pregnancy.

26. For many patients, waiting for prior authorization pro-

longs the period before the abortion can be performed, and in many cases brings the patient close to or beyond the twelfth week of pregnancy, when labor must be induced with prostaglandin at significantly increased risk.

27. There is no other procedure that I perform, including elective surgery or sterilization, in which the state imposes its medical judgment in any way before providing medicaid reimbursement.

JOSEPH HOROWITZ, M.D.

Sworn and subscribed to before me this 20th day of October, 1975.

(JURAT OMITTED IN PRINTING)

29.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Eugene Corley, M.D. of Bridgeport, Connecticut deposes and says:

1. I am over 21 years of age.

2. I believe in the obligation of an oath.

3. I am a physician licensed to practice medicine and surgery in the State of Connecticut.

4. I am a specialist in the practice of obstetrics and gynecology and am a member of the obstetrics and gynecology staff of Park City Hospital in Bridgeport, Connecticut.

5. I am the Chairman of the Medical Committee of the state NAACP.

6. My practice consists largely of service to low-income women in Bridgeport, Connecticut.

7. Approximately 70% of my patients are dependent on medicaid from the State of Connecticut for all of their medical care.

8. In many years of practice I have made the following observations about medicaid patients and about low income minority group patients in general.

a. Women with low incomes have less access to conventional forms of birth control than women with resources to obtain private medical care;

b. Such women are therefore more often forced to resort to abortion as a means of preventing unwanted childbirth;

c. Low income women often do not consult a physician as rapidly as middle and upper income patients;

d. Low income patients are therefore more likely to request abortions when they are more than eight weeks pregnant; late abortions are more frequent among Black and low income women;

9. Abortion is a procedure which becomes increasingly complicated as pregnancy progresses and the fetus and uterine tissue mass increase in size.

10. Beyond the twelfth week of pregnancy abortion must be performed by inducing uterine contractions through the injection of the hormone prostaglandin.

11. This procedure carries three to four times the risk of complication as earlier abortion.

12. I do not perform any abortions after the twelfth week of pregnancy.

13. I have read and am familiar with Section 275 of the Connecticut Manual of Public Assistance.

14. By requiring prior authorization before an abortion can be performed on a medicaid patient, the State Department of Social Services forces women to delay performance of a procedure which must be done as rapidly as possible.

15. In every case the risk to the patient is increased by awaiting prior authorization.

16. Medicaid patients as a group are more likely to request abortion when they are close to the twelfth week of pregnancy; these women are forced to seek second trimester abortions by the prior authorization requirements.

17. I will not certify that an abortion is medically necessary for a patient's health unless there is a bona fide medical reason why she should not carry her pregnancy to term.

18. The large majority of my patients request abortions for economic reasons: an unwanted child would cause great financial hardship for them or their families.

19. Many of my patients are struggling to build a better life for themselves and their families; and an unplanned pregnancy can ruin any chance they have of breaking the cycle of poverty.

20. Women in this situation can, of course, carry a pregnancy to term and care for another child without any change in their psychological condition or their physical health.

21. I do not believe the State of Connecticut should force poor women and their physicians to falsify the facts so that they can obtain abortion services.

EUGENE CORLEY, M.D.

Sworn to before me this 20th day of October, 1975.

(JURAT OMITTED IN PRINTING)

30.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

GORDON JONAS, M.D., being duly sworn, deposes and says:

1. I am over 18 years of age.

2. I believe in the obligation of an oath.

3. I am a physician specializing in the practice of obstetrics and gynecology in Fairfield, Connecticut, and I am on the Obstetrics and Gynecology Staff of Park City Hospital in Bridgeport.

4. As part of my practice, I perform abortions at Park City Hospital.

5. I have performed abortions for several patients who are recipients of medical assistance from the State of Connecticut.

6. I have read and am familiar with Section 275 of the Connecticut State Department of Social Services Manual, Volume 3, Chapter III, effective August 26, 1975.

7. I am familiar with Social Services form W-601, requesting prior authorization and with forms W-217 and W-217a.

8. It is my opinion, based on my experience as a practicing physician, that Section 275 seriously inhibits me from

providing optimum medical care to those patients of mine who are recipients of medical assistance from the State of Connecticut, for the following reasons:

a) Section 275 excludes payment for abortions which are not "medically necessary for the patient's health";

b) It is my opinion that every abortion, by definition, is necessary, because it is the only means of terminating an unwanted pregnancy;

c) Section 275 indicates that the State Department of Social Services does not define necessary in the sense of being necessary to terminate the pregnancy, but requires an additional showing that continued pregnancy will result in a deterioration of the physical or mental condition of the mother;

d) I do not believe that when a patient chooses an abortion for personal or family planning reasons, that abortion is medically necessary for her health; therefore, I cannot certify that such an abortion is medically necessary without violating my medical ethics;

e) It is common knowledge that the overwhelming majority of abortions are performed as a family planning technique and not because of any danger to the physical or mental health of the mother;

f) The result of Section 275 is that I am forced to deny services to women dependent on medicaid, which services I and the hospital routinely provide for women who have the resources to pay for them;

g) I have consistently refused to perjure myself and claim medical necessity when none, in fact, exists;

h) It seems to me to be highly undesirable for the welfare department to ask physicians to lie about their reasons in order to give their patients the care they need;

i) Even if I were willing to certify to medical necessity, Section 275 forces me to delay preparation for the abortion until I am able to obtain prior authorization from the Central Office of the Department of Social Services;

j) Abortion is a procedure which must be performed as early in pregnancy as possible; because the condition of pregnancy progresses from day to day, any delay in abortion increases the risk of complication for the patient;

k) It is my practice to schedule patients for abortion within five days of the final abortion decision;

l) I do not perform any abortions after the twelfth week of pregnancy;

m) I know of no hospital facility in Fairfield County which will perform abortions after the twelfth week of pregnancy;

n) Yale New Haven Hospital has recently instituted a new policy whereby it will not perform any abortions beyond the twelfth week for patients living outside New Haven County; (See letter to Nathan Kase, attached hereto.)

o) Many women who are medicaid recipients request abortions later in pregnancy than do other women and to await prior authorization in these cases postpones the abortion beyond the twelfth week and, therefore, denies them the possibility of a safe, legal abortion by the physician of their choice.

GORDON JONAS, M.D.

Sworn to before me this 20th day of October, 1975.

(JURAT OMITTED IN PRINTING)

31.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

HARRIET BOGRAD of New Haven, Connecticut deposes and says:

1. I am over 18 years of age.

2. I believe in the obligation of an oath.

3. I am the Executive Director of Women's Health Servies, Inc. of New Haven, a clinic licensed to perform abortions by the State of Connecticut, which provides abortions for women less than twelve weeks pregnant, as well as pre-abortion and post abortion counselling and other services.

4. Women's Health Services, Inc. has provided abortions for many women dependent for payment upon medicaid, or medical assistance from the State of Connecticut.

5. Upon receiving the revised section 275 of the Connecticut Manual of Public Assistance, I telephoned Harold MacIntosh, Assistant Director of Health Administration, to ask him to clarify what regulation meant by "medically necessary for the patient's health."

6. Mr. MacIntosh responded by stating to me that the Department of Social Services would grant prior authorization for an abortion when the following statement as to medical necessity is submitted on form W-601:

"Continuation of this pregnancy places this woman's health at considerable risk because of her present state of physical and mental stress. Our medical director recommends that this pregnancy be terminated as soon as possible."

HARRIET BOGRAD

Sworn to before me this 20th day of October, 1975.

(JURAT OMITTED IN PRINTING)

32.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

Patricia Tunstall, a resident of New Haven, Connecticut deposes and says:

1. I am over the age of 18.

2. I believe in the obligation of an oath.

3. I am a health worker at Women's Health Services, Inc. of New Haven, a clinic licensed to perform abortions by the State of Connecticut, which provides abortions to women less than twelve weeks pregnant, as well as pre-abortion and post-abortion counselling and other services.

4. My work at Women's Health Services involves answering telephone inquiries, supervising telephone inquiries, counselling and secretarial work.

5. Approximately ten percent of the patients at Women's Health Services are medicaid recipients.

6. Since August 26, 1975, I have received telephone calls from several medicaid recipients who state that they do not think medicaid will pay for their abortion.

PATRICIA TUNSTALL

Sworn and subscribed to this 20th day of October, 1975.

(JURAT OMITTED IN PRINTING)

33.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

MARY HENNESSY, being duly sworn, deposes and says:

1. I am over 18 years of age and a resident of Stratford, Connecticut.

2. I believe in the obligation of an oath.

3. I am a social worker in the Department of Obstetrics and Gynecology at Bridgeport Hospital, Bridgeport, Connecticut.

4. As part of my duties at Bridgeport Hospital I answer telephone inquiries from persons seeking abortions.

5. Most inquiries coming to my office are from women receiving medicaid from the State of Connecticut, who have gone first to the Bridgeport Hospital clinic or to their private physicians.

6. Since August 26, 1975 I have received many calls from women who believe that medicaid will not provide payment for abortion services.

7. These women indicate to me that the State will not pay for abortions and often refer to a notice sent to them with their monthly aid to Families with Dependent Children checks, stating that abortions must be medically necessary.

8. Since August 26, 1975, there has been a decrease in the number of requests for abortions from medicaid recipients.

9. As another part of my work at Bridgeport Hospital I fill out and process all requests for prior authorization from the Department of Social Services for all obstetrics and gynecology patients.

10. There is no other obstetrical or gynecological procedure for which the Department of Social Services requires prior authorization or a certification of medical necessity.

MARY HENNESSY

Sworn and subscribed to before me this 15th day of October, 1975.

(JURAT OMITTED IN PRINTING)

34.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

AFFIDAVIT

BETTY CARRION, being duly sworn, deposes and says:

1. I am over 18 years of age and a resident of Trumbull, Connecticut.

2. I believe in the obligation of an oath.

3. I am a social worker at Bridgeport Hospital, Bridgeport, Connecticut, in the obstetrics and gynecology department.

4. As part of my work at Bridgeport Hospital I answer telephone inquiries from women about abortions.

5. Nearly all calls to my office are from patients who have gone to the hospital clinic, or from patients of private physicians who must use medicaid to pay for their services.

6. Since August 26, 1975, I have received many calls from women who indicate that the State Department of Social services will not pay for their abortions because the abortions are not medically necessary.

7. These women believe that they will have to find some other means of paying for their abortions.

BETTY CARRION

Sworn and subscribed to before me this 17th day of October, 1975.

(JURAT OMITTED IN PRINTING)

(CERTIFICATION OMITTED IN PRINTING)

35.

United States Court of Appeals
For The Second Circuit

EXCERPT FROM MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*, pp. 9, 10 (submitted at request of the U.S. Court of Appeals (2d Cir.) in *Roe* v. *Norton*, 522 F.2d 928, filed on or about February 1, 1975).

• • •

"Similarly, we believe that title XIX of the Social Security Act does not preclude a requirement in a state's Medicaid program of prior approval by the state. Indeed, where a state wishes to ensure that limited resources will be used only for medically necessary procedures, a requirement of prior approval for Medicaid payments may be the most efficient way of administering the program in the best interests of the recipient. See 42 U.S.C. 1396a (a) (19). A reasonable prior authorization expeditiously handled would not be inconsistent with Title XIX."

• • •

Respectfully Submitted,

CARLA A. HILLS,
Assistant Attorney General

WILLIAM KANTER,
Attorney, Department of Justice

JOHN B. RHINELANDER,
General Counsel, Department of Health, Education, and Welfare

SARAH WILLIS WILCOX,
Attorney, Office of the General Counsel, Department of Health, Education, and Welfare

NANCY S. NEMON,
Attorney, Office of the General Counsel, Department of Health, Education, and Welfare

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)